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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re JAMES FLOYD CANNON and
JAMIE DARLENE CANNON,

Debtors.

Case No.: 15-bk-11835
DC No.: RWM-1
Chapter 7

Hon. Fredrick E. Clement

COMPLAINT FOR:

(1) NEGLIGENCE (LEGAL MALPRACTICE);
(2) BREACH OF FIDUCIARY DUTY;
(3) BREACH OF CONTRACT

JAMES CANNON, an individual,

Plaintiff,

vs.

ROBERT STANLEY WILLIAMS, an
individual; WILLIAMS & WILLIAMS,
Inc., a California professional corporation;
and DOES 1-10, inclusive,

Defendants.

DEMAND FOR JURY TRIAL

1 Debtor and Plaintiff JAMES CANNON ("Debtor" or "Plaintiff") complains and alleges as
2 follows:

3 **JURISDICTION**

4 1. The Court has subject matter jurisdiction of the above-captioned Chapter 7
5 bankruptcy case pursuant to 28 U.S.C. § 1334. An application to reopen case and a
6 motion for a determination that the *Barton* doctrine does not apply to this case will be
7 filed immediately after this Complaint. In the event the *Barton* doctrine does apply, then
8 the Court has subject matter jurisdiction of the proceedings commenced by this
9 Complaint ("Malpractice Action") under federal common law because it is a suit against
10 a court-appointed officer or court-approved counsel for acts done in that capacity. *Barton*
11 *v. Barbour*, 104 U.S. 126, 26 L.Ed. 672 (1881); *In re Crown Vantage, Inc.*, 421 F.3d 963 (9th
12 Cir. 2005).

13 **PARTIES**

14 2. Plaintiff James Cannon is an individual who resided in Bakersfield,
15 California and Weiser, Idaho at all times relevant hereto.

16 3. Defendant Williams & Williams, Inc., is a California corporation with
17 offices at 2441 G Street, Suite A, Bakersfield, California 93301 ("Law Firm").

18 4. Defendant Robert Stanley Williams is an attorney licensed to practice law in
19 the State of California, with his principal place of business at 2441 G Street, Suite A,
20 Bakersfield, California 93301 ("Williams," who together with the Law Firm shall be
21 collectively referred to as "Defendant").

22 5. Plaintiff is presently unaware of the names or capacities of the defendants
23 named in this Complaint ("Complaint") as Does 1-10 inclusive, and therefore sues said
24 defendants by said fictitious names. Plaintiff will seek leave of the Court to amend this
25 Complaint to allege the true names and capacities of said defendants when they have
26 been ascertained. Plaintiff is informed and believes, and thereon alleges, that each of said
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1 fictitiously named defendants is responsible in some manner for the acts, omissions and
2 damages alleged in this Complaint.

3 6. Plaintiff is informed and believes, and thereon alleges, that at all times
4 relevant to this Complaint, all defendants, including the fictitiously named defendants,
5 were the agents, servants, alter egos, affiliates, employers, principals and/or employees of
6 each other and engaged in the conduct alleged herein within the course, scope and
7 authority of their respective capacities.

8 **STATEMENT OF FACTS**

9 7. In 2015, Plaintiff was an individual engaged in various businesses,
10 including real estate investment and property management.

11 8. In or around April of 2015, Plaintiff retained Defendant to provide advice
12 and representation in connection with a voluntary bankruptcy petition. Defendant
13 agreed to perform legal services in exchange for valuable consideration.

14 9. Plaintiff desired to preserve his business enterprise as a going concern.
15 Accordingly, Plaintiff sought to pursue reorganization under Chapter 11 of the
16 Bankruptcy Code.

17 10. Due to conflicted motives, self-interest, or conduct falling below the
18 standard of care, Defendant caused Plaintiff to believe, and advised, that he should file a
19 petition under Chapter 13 rather than Chapter 11. To this end, Defendant further advised
20 Plaintiff to transfer certain real property encumbered by a recourse loan so that Plaintiff
21 would meet the debt eligibility requirements under Chapter 13. Pursuant to Defendant's
22 advice, Plaintiff transferred his interest in the property ("Prepetition Transfer").
23 Thereafter, Defendant filed a Chapter 13 bankruptcy petition ("Petition") on Plaintiff's
24 behalf.

25 11. After filing the Petition, Defendant advised Plaintiff that he could accept
26 outstanding offers to purchase certain other real property. Pursuant to Defendant's
27 advice, Plaintiff closed sale on that property ("Postpetition Sale").
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1 12. As a consequence of Defendant's advice and conduct in connection with the
2 Prepetition Transfer, the Petition, and the Postpetition Sale, the Court converted the
3 above-captioned bankruptcy case, No. 15-bk-11835 (Bankr. E.D. Cal.), to Chapter 7
4 ("Bankruptcy Matter"). The Court ultimately denied Plaintiff a discharge.

5 13. In regards to the Bankruptcy Matter, Defendant: (1) failed to effectuate the
6 intentions and objectives of Plaintiff; (2) failed to competently, properly, and diligently
7 handle the Bankruptcy Matter within the applicable standard of care; (3) improperly
8 advised Plaintiff to file a petition under Chapter 13; (4) failed to advise Plaintiff to
9 pursue a workout agreement with his creditors prior to filing for bankruptcy; (5) failed to
10 timely advise Plaintiff to file a petition under Chapter 11 or to timely consult counsel
11 regarding a Chapter 11 petition; (6) failed to evaluate the financial situation of Plaintiff
12 and Plaintiff's business enterprise; (7) failed to identify the business entities for which
13 bankruptcy protection was sought; (8) incorrectly advised Plaintiff that the Prepetition
14 Transfer would allow him to meet the Chapter 13 eligibility requirements; (9) failed to
15 timely advise Plaintiff that the Postpetition Sale required prior court approval; (10) failed
16 to properly oppose the motion to convert the case to Chapter 7; (11) failed to successfully
17 move the Court to convert the case to Chapter 11; (12) failed to voluntarily dismiss the
18 case prior to conversion to Chapter 7; (13) failed to oppose motions (e.g. motion for
19 denial of discharge) and file objections to creditors' claims; (14) failed to timely submit all
20 required documentation and financial information to the Court and the bankruptcy
21 trustee; (15) failed to timely obtain necessary financial documentation and disclosures
22 from Plaintiff; (16) mishandled the case after conversion to Chapter 7; (17) failed to
23 advise Plaintiff regarding the disposition of assets that were property of the bankruptcy
24 estate; (18) failed to timely file amended schedules; (19) failed to preserve Plaintiff's
25 business enterprise as a going concern; (20) failed to advise Plaintiff to consult counsel
26 regarding Defendant's malpractice; and (21) failed to obtain a discharge.

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PROFESSIONAL NEGLIGENCE

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- (3) improperly advised Plaintiff to file a petition under Chapter 13;
- (4) failed to advise Plaintiff to pursue a workout agreement with his creditors prior to filing for bankruptcy;
- (5) failed to timely advise Plaintiff to file a petition under Chapter 11 or to timely consult counsel regarding a Chapter 11 petition;
- (6) failed to evaluate the financial situation of Plaintiff and Plaintiff's business enterprise;
- (7) failed to identify the business entities for which bankruptcy protection was sought;
- (8) incorrectly advised Plaintiff that the Prepetition Transfer would allow him to meet the Chapter 13 eligibility requirements;
- (9) failed to timely advise Plaintiff that the Postpetition Sale required prior court approval;
- (10) failed to properly oppose the motion to convert the case to Chapter 7;
- (11) failed to successfully move the Court to convert the case to Chapter 11;
- (12) failed to voluntarily dismiss the case prior to conversion to Chapter 7;
- (13) failed to oppose motions (e.g. motion for denial of discharge) and file objections to creditors' claims;
- (14) failed to timely submit all required documentation and financial information to the Court and the bankruptcy trustee;
- (15) failed to timely obtain necessary financial documentation and disclosures from Plaintiff;
- (16) mishandled the case after conversion to Chapter 7;
- (17) failed to advise Plaintiff regarding the disposition of assets that were property of the bankruptcy estate;
- (18) failed to timely file amended schedules;
- (19) failed to preserve Plaintiff's business enterprise as a going concern;

(20) failed to advise Plaintiff to consult counsel regarding Defendant's malpractice; and
(21) failed to obtain a discharge.

19. As a direct and proximate result of Defendant's breaches of the standard of care, and failure to exercise or provide the degree of legal expertise and competence required in the Bankruptcy Matter, Plaintiff incurred damages and losses according to proof.

20. For Defendant's negligence, Plaintiff seeks compensatory and consequential damages in amounts more specifically to be proven at trial.

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

21. Plaintiff realleges and incorporates herein as if fully set forth all of the allegations contained in this Complaint.

22. As Plaintiff's attorney, Defendant owed fiduciary duties, requiring competent and proper handling, within the applicable standard of care, and complying with the applicable Rules of Professional Conduct and the applicable provisions of the Business and Professions Code in dealings with Plaintiff.

23. Defendant breached their fiduciary duties to Plaintiff, in that Defendant, among other things:

- (1) violated the California Rules of Professional Conduct, including but not limited to Rules 3-100, 3-110, 3-210, 3-310, and 3-500;
- (2) failed to competently, properly, and diligently handle the Bankruptcy Matter within the applicable standard of care;
- (3) due to conflicted motives, self-interest, or conduct falling below the standard of care, improperly advised Plaintiff to file a bankruptcy petition under Chapter 13;

- 1 (4) failed to timely advise Plaintiff to consult counsel regarding a Chapter
2 11 petition;
3 (5) failed to identify the business entities for which bankruptcy protection
4 was sought;
5 (6) improperly advised Plaintiff to transfer property in order to meet
6 Chapter 13 eligibility requirements;
7 (7) improperly advised Plaintiff to sell property without first obtaining
8 approval from the Court;
9 (8) failed to timely obtain necessary financial documentation and
10 disclosures from Plaintiff;
11 (9) failed to advise Plaintiff regarding the disposition of assets that were
12 property of the bankruptcy estate; and
13 (10) failed to advise Plaintiff to consult counsel regarding Defendant's
14 malpractice;

15 24. As a direct and proximate result of the above-described breaches of
16 fiduciary duties by Defendant to Plaintiff, Plaintiff incurred damages and losses
17 according to proof.

18 **THIRD CAUSE OF ACTION**

19 **BREACH OF CONTRACT**

20 25. Plaintiff realleges and incorporates herein as if fully set forth all of the
21 allegations contained in this Complaint.

22 26. Plaintiff and Defendant entered into a written retainer agreement according
23 to the terms of which Defendant agreed, in exchange for valuable consideration, to
24 perform legal services for Plaintiff in connection with the Bankruptcy Matter.

25 27. The retainer agreement provided, among other things, that Defendant
26 would represent Plaintiff in connection with the bankruptcy. Implied in the retainer
27 agreement was that Defendant agreed to perform these legal services in a manner
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1 consistent with the fiduciary relationship of attorney and client and in a manner
2 consistent with the standard of practice ordinarily followed by other attorneys in good
3 standing practicing bankruptcy law in Kern County, California.

4 28. Plaintiff performed all his obligations under the terms of the retainer
5 agreement referenced above, or such performance was excused.

6 29. In accordance with the retainer agreement and in reliance on Defendant's
7 undertaking to properly represent Plaintiff, Plaintiff paid the Defendant's attorney fees.

8 30. Defendant failed to perform under the retainer agreement in that
9 Defendant breached its terms and failed to exercise the requisite skill and care of a
10 reasonable attorney practicing bankruptcy law in Kern County, California, in connection
11 with Bankruptcy Matter, including, but not limited to, the following:

12 (1) failed to effectuate the intentions and objectives of Plaintiff;

13 (2) failed to competently, properly, and diligently handle the Bankruptcy
14 Matter within the applicable standard of care;

15 (3) improperly advised Plaintiff to file a petition under Chapter 13;

16 (4) failed to evaluate the financial situation of Plaintiff and Plaintiff's
17 business enterprise;

18 (5) failed to identify the business entities for which bankruptcy protection
19 was sought;

20 (6) incorrectly advised Plaintiff that the Prepetition Transfer would allow
21 him to meet the Chapter 13 eligibility requirements;

22 (7) failed to obtain court approval prior to the Postpetition Sale;

23 (8) failed to successfully move the Court to convert the case to Chapter 11;

24 (9) failed to voluntarily dismiss the case prior to conversion to Chapter 7;

25 (10) failed to oppose motions (e.g. motion for denial of discharge) and file
26 objections to creditors' claims;

(11) failed to timely submit all required documentation and financial information to the Court and the bankruptcy trustee;
(12) failed to timely obtain necessary financial documentation and disclosures from Plaintiff;
(13) failed to advise Plaintiff regarding the disposition of assets that were property of the bankruptcy estate;
(14) failed to timely file amended schedules; and
(15) failed to obtain a discharge.

31. As a direct and proximate result of Defendant's breaches of the retainer agreements in the Bankruptcy Matter, Plaintiff has incurred damages and losses according to proof, including, but not limited to, attorney fees, and other losses and damages according to proof at the time of trial.

32. Further, as a result of the failure of Defendant to perform as required under the retainer agreement, there has been a failure of consideration and a breach of the retainer agreement. The value of the legal services Defendant provided to Plaintiff has not yet been ascertained, but is believed to be less than the sums paid by Plaintiff to Defendant under the retainer agreement.

33. Plaintiff seeks compensatory and consequential damages from Defendant in an amount to be proven at trial.

WHEREFORE PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:

On the First Cause of Action:

1. For compensatory and consequential damages according to proof.

On the Second Cause of Action:

1. For compensatory and consequential damages according to proof.

On the Third Cause of Action:

1. For compensatory and consequential damages according to proof.

On All Causes of Action:

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1. For costs of suit incurred herein.
2. For such other and further relief as the Court may deem appropriate.

Dated: January 12, 2018

MAKAREM & ASSOCIATES, APLC

By: /s/ Ronald W. Makarem
Ronald W. Makarem
Attorneys for Plaintiff JAMES CANNON

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DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury.

Dated: January 12, 2018

MAKAREM & ASSOCIATES, APLC

By: /s/ Ronald W. Makarem
Ronald W. Makarem
Attorneys for Plaintiff JAMES CANNON